IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9047 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HG JANI & 3 - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
Mr. Bhaskar P. Tanna, Senior Advocate assisted by Mr. Nikhil S. Kariel, on behalf of TANNA ASSOCIATES for Petitioner(s) : 1 - 4.
Mr. DIPEN DESAI, Asst.GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the respective petitioners have challenged the legality and

validity of the order passed by the State Government, more particularly, of the Section Officer, Roads and Building Department dated 29.12.1995 by which the benefit of higher pay-scale given to the petitioners granted with effect from 17.9.1994 has been withdrawn.

2. Number of submissions have been made on behalf of respective parties on merits. Shri Tanna, learned Senior Advocate appearing on behalf of the petitioners has heavily relied upon the judgment dated 30th March 1994 delivered the learned Single Judge of this Court in Special Civil Application No. 5166 of 1997; judgment and order dated 6.11.1996 rendered by the Division Bench of this Court in L.P.A. No. 531 of 1996 which is confirmed by the Hon'ble Supreme Court. However, considering the fact that the impugned order dated 29.12.1995, by which the benefit of higher pay-scale granted to the petitioners with effect from 17.9.1994 has been cancelled/set aside, is without affording any opportunity to

the petitioners and the same is in breach of principles of natural justice, this Court at present is not considering the submissions on merits and proposes to dispose of the Special Civil Application quashing and setting aside the impugned order and directing the respondents to take appropriate decision in accordance with law and on merits and after giving opportunity to the petitioners. It is cardinal principle of law that whenever any benefit is withdrawn and/or the order is set aside affecting the rights of the employees having civil consequences, opportunity of hearing is required to be given. Admittedly, before passing the impugned order dated 29.12.1995 and quashing and setting aside the order granting benefit of higher scale to the petitioners no opportunity of hearing was given to the petitioners. Under the circumstances, the impugned order is in breach of principles of natural justice which requires to be quashed and set aside.

3. For the reasons stated above, the petition succeeds in part. The impugned order dated 29.12.2005 is hereby quashed and set aside. It will be open for the respondents to pass an appropriate order in accordance with law and on merits after giving opportunity to the petitioners. Shri Dipen Desai, learned AGP under instructions from one Shri Bhavesh Erda, Under Secretary, Road and Buildings, has submitted that necessary show cause notices will be issued within the period of three weeks from today and the petitioners may submit their detailed reply within the period of 10 days thereafter. On receipt of the same, the concerned Departments are directed to take appropriate decision in accordance with law and on merits within the period of three months thereafter. It is, however, made clear that this Court has not expressed any opinion on merits of the case and the impugned order is set aside only on the grund that the same is in breach of principles of

natural justice. Rule is made absolute. Direct service is permitted.

[M.R. Shah, J.]

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